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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) CPDI-5596A (112713-913)	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____		Application Number 09/917,136	Filed July 27, 2001
First Named Inventor Sherwin Shang et al.		Art Unit 1711	
Examiner Jeffrey C. Mullis		Art Unit 1711	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input checked="" type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 48,769 Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> </div> <div style="width: 45%; text-align: right;">  _____ Ted J. Barthel _____ Typed or printed name 312 578-6846 _____ Telephone number April 23, 2007 _____ Date </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Sherwin Shang et al.
Appl. No.: 09/917,136
Conf. No.: 3282
Filed: July 27, 2001
Title: AUTOCLAVABLE, NON-ADHERENT, HEAT SEALABLE POLYMER
FILMS FOR FABRICATING MONOLAYER AND MULTIPLE LAYERED
FILMS AND CONTAINERS
Art Unit: 1711
Examiner: Jeffrey C. Mullis
Docket No.: CPDI-5596A (112713-913)

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Advisory Action dated April 12, 2007 and in further response to the final Office Action dated January 22, 2007, please find the following.

Form PTO/SB/33, Pre-Appeal Brief Request for Review; and

Form PTO/SB/31, Notice of Appeal.

Remarks begin on page 2 of this paper.

REMARKS

This Paper, the Pre-Appeal Brief Request for Review, and the Notice of Appeal are submitted in response to the Advisory Action mailed April 12, 2007 and in further response to the final Office Action mailed on January 22, 2007 having a shortened statutory response period that ended on April 22, 2007. This Paper is submitted within the shortened statutory response period as April 22, 2007 was a Sunday. The Commissioner is hereby authorized to charge the amount of \$500.00 for the Notice of Appeal and any additional fees associated with this submission to Deposit Account number 02-1818.

Claims 16-19 and 145-161 are pending in this application. Claims 1-15, 20-144, and 162-194 have been canceled.

Claims 16-19 and 145-161 were rejected under 35 U.S.C. § 112 1st paragraph as the claim term “film having a surface haze value of less than or equal to 17%” was alleged to be not supported in the specification. This term has been removed from the claims. No new matter has been added and the claim scope has not been narrowed as a result of this amendment. Applicants respectfully request that the §112 rejection be withdrawn.

Claims 16-19 and 145-161 were rejected under 35 U.S.C. §102(e)/§103(a) for allegedly being anticipated by/obvious in view of U.S. Patent No. 6,743,523 to Woo et al. (*Woo*). Applicants respectfully disagree with and traverse this alleged rejection as 1) *Woo* is not prior art and 2) the effective filing date for the present claims is March 16, 2000, which is the filing date of parent U.S. Patent Application Serial No. 09/526,357, now U.S. Patent No. 6,969,483 (the *Parent*).

1. *Woo is Not Prior Art*

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single **prior art reference.**” *Verdegaal Bros. v. Union Oil of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). *Woo* is not a prior art reference as *Woo* fails to pre-date the priority date of the present application. The present application is a CIP application and claims priority to U.S. Patent Application Serial No. 09/526,357 filed on March 16, 2000, now U.S. Patent No. 6,969,483 (the *Parent*). *Woo* has a filing date of March 16, 2000. As the *Parent* and *Woo* were filed on the same day, *Woo* is not prior art with respect to the *Parent*.

The Examiner attempts to support the alleged anticipation rejection with the data from the Table found at columns 9-12 of *Woo* (the *Table of Woo*). See Office Action dated August 22, 2006 at page 3. However, the *Table of Woo* is identical to Table 2 found on page 21 of the present application. Table 2 of the present application is identical to the Table found at columns 11-12 of the *Parent*. Thus, the *Table of Woo* is disclosed in the *Parent*. The *Table of Woo*, upon which the Examiner relies for anticipation, does not pre-date the priority date of the present application. Simply stated, the *Table of Woo* is disclosed in the *Parent* and is not prior art with respect to the present claims. As *Woo* is not prior art, *Woo* cannot not anticipate the present claims. Applicants respectfully request that *Woo* to be removed as a reference.

2. *The Present Claims Are Supported by the Parent*

The Examiner states that “[i]n order for the present case to possess the filing date of the parent case the full breadth of the instant claims has to be supported by the parent case.” Advisory Action, dated April 12, 2007. The Examiner further states that “While it appears that applicant’s examples disclose compositions in which the second component is not crosslinked, a single example cannot be said to provide support for a claim reciting components which may or may not be present as well as ranges of concentrations.” *Id.* Applicants respectfully submit that the Examiner’s statements do not accurately present the proper test for establishing an earlier priority date under the patent law.

To be entitled to the filing date of the *Parent*, each element of independent claim 145, for example, must be expressly, implicitly, or inherently supported by the *Parent*. MPEP § 2163(b). The test for determining whether the present claims are supported by the *Parent* is whether the *Parent* reasonably conveys to the skilled artisan that the Applicants had possession of the claimed subject matter at the filing date of the *Parent*. *Eiselstein v. Frank*, 34 USPQ2d 1467, 1470 (Fed. Cir. 1995). One of ordinary skill in the art would recognize that the Applicants had possession of the presently claimed subject matter at the filing date of the *Parent*. Table 2 at page 21 of the present specification (supported by the *Parent* as discussed above), provides numerous examples of polymeric films containing a cross-linked ethylene component and a non-crosslinked propylene component. The Examiner has admitted that Table 2 of the *Parent* application does indeed support the present claims. See Advisory Action dated April 12, 2007 (“While it appears that applicant’s examples disclose compositions in which the second

component is not crosslinked....) *see also* Office Action dated August 22, 2006 at page 3 whereby the Examiner asserts an anticipation rejection based on the *Table of Woo* (which is disclosed in the *Parent* as discussed above).


Moreover, the Examiner's assertion stating that a single example cannot support a claim is misplaced. Disclosure of a representative compound may provide implicit description upon which to base generic claim language. *In re Smith*, 173 USPQ 679, 683 (CCPA 1972). Table 2 of the present application provides, not one, but numerous examples of polymeric films containing a cross-linked ethylene component and a non-crosslinked propylene component. Furthermore, the *Parent* clearly discloses that methyl pentene may be the second component. *Parent* at col. 6 lines 2-14. The *Parent* further discloses the claimed ranges (55%-99% weight for the first component and 1%-45% weight for the second component) for each component. *Parent*, col. 6 lines 2-23. The *Parent* thereby discloses every element of independent claim 145, for example.

The case law is clear that a single example of a representative compound disclosed in the specification may support a claim and establish an earlier priority date for the claim. Table 2 of the present application, which is supported by the *Parent*, discloses not one, but several examples of the claimed subject matter. The Examiner has admitted that Table 2 supports the present claims. Table 2 is supported by the *Parent*. All the elements of independent claim 145 are disclosed in the *Parent*. Thus, one of ordinary skill in the art would recognize that the Applicants had possession of the presently claimed subject matter at the time the *Parent* was filed. The present claims are therefore supported by the *Parent*.

In view of the foregoing remarks, Applicants submit that claims 16-19 and 145-161 are in a condition for allowance and respectfully request a notice of the same.

Respectfully submitted,

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Dated: April 23, 2007